UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

AHOKA ISAAC LOKOMBE,

Petitioner,

v.

DAVID WESLING, U.S. Immigration and Customs Enforcement and Removal Operations, Field Office Director;
TODD LYONS, Acting Director U.S. Immigrations and Customs Enforcement;
KRISTI NOEM, Secretary, U.S. Department of Homeland Security;
PAMELA BONDI, Attorney General, United States Department of Justice; and
CHRIS BRACKETT, Superintendent, Strafford County Department of Corrections

Respondents.

Civil No. 1:26-cv-00053-JL-AJ

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Ahoka Isaac Lokombe has filed the above-captioned petition seeking immediate release from immigration detention or release on payment of the bond ordered by an Immigration Judge. Doc. No. 1. Petitioner alleges that he is being unlawfully detained pursuant to the automatic stay provision found at 8 CFR § 1003.19(i)(2), both because the provision is unconstitutional, and because he has been held beyond the 90 days authorized by that provision. Doc. No. 1 ¶¶ 28-29. Petitioner is incorrect about the basis for his current detention, and therefore his Petition, as written, must fail. However, Federal Respondents acknowledge that as currently detained, Petitioner is likely eligible for relief under this Court's ruling in *Loja v. FCI Berlin, Warden*, No. 1:25-CV-386-JL-TSM, 2025 WL 3079160 (D.N.H. Nov. 4, 2025).

The facts alleged in the Petition are largely correct, but incomplete. Petitioner is a national of the Democratic Republic of Congo. Doc. No. 1 at ¶ 1. Petitioner entered the United States without inspection around October 11, 2024. *Id.* at ¶ 2. Upon his arrival to the United States, he was arrested for criminal trespass, transferred to ICE's custody, and placed in removal proceedings. *Id.* On November 18, 2024, Petitioner was sentenced to 38 days' incarceration. *Id.* at ¶ 24. On November 25, 2024, Petitioner was taken into custody by ICE and released on an order of recognizance. *Id.* at ¶ 24.

On June 27, 2025, Petitioner was re-detained by ICE due to reporting violations. *Id.* at ¶ 26. On July 8, 2025, he applied for asylum and withholding of removal. *Id.* at ¶ 27. On August 14, 2025, Petitioner had a custody redetermination hearing before an Immigration Judge ("IJ"), who ordered him released on payment of $7,500. *Id.* at ¶ 28. On the same day, DHS stayed his release on bond by filing a notice of intent to appeal the custody redetermination, invoking the automatic stay of the bond order authorized by 8 C.F.R. § 1003.19(i)(2).[1] DHS subsequently filed the appeal. *Id.* at ¶ 30.

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[1] 8 C.F.R. § 1003.19(i)(2) provides:

> In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination . . . with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board.

Under 8 C.F.R. § 1003.6(c)(4), the stay will last for at least 90 days; the other provisions of 8 C.F.R § 1003.6 allow for extensions of the stay under various circumstances.

Federal Respondents acknowledge that several courts, including another session of this Court, have held 8 C.F.R. § 1003.19(i)(2) to be unconstitutional. *See Alves da Silva v. US Immigr. & Customs Enf't*, No. 25-CV-284-LM-TSM, 2025 WL 2778083 at *6 (D.N.H. Sept. 29, 2025) (collecting cases).

On December 2, 2025, the Board of Immigration Appeals ("BIA") sustained DHS's appeal and vacated the IJ's decision granting bond pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See Ahoka Isaac Lokombe*, AXXX-XXX-155 (BIA Dec. 2, 2025), attached as Exhibit A. On December 22, 2025, Petitioner was ordered removed. *Id.* at ¶ 32. On January 6, 2026, Petitioner timely filed an appeal of his order of removal with the BIA. *Id.* at ¶ 33. Because that appeal is pending, Petitioner's order of removal is not yet final. *See* 8 C.F.R. § 1241.1 (an order of removal becomes final on "dismissal of an appeal by the [BIA]").

Petitioner argues that he is being held pursuant to the automatic stay provision, which lapsed on or about November 25, 2025, but he is incorrect. Petitioner is no longer being held pursuant to the automatic stay, because the stay expired when the BIA issued its order sustaining DHS' appeal. *See* 8 C.F.R. § 1003.19(i)(2) (the IJ order "shall remain in abeyance pending decision of the appeal by the Board"); 8 C.F.R. § 1003.6(c)(4) ("If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal.").

Thus, Federal Respondents submit that Petitioner is being lawfully held pursuant to his current pending removal proceedings, subject to 8 U.S.C. § 1225(b)(2), because he is an applicant for admission subject to mandatory detention. *See Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026) (finding that "alien[s] present with in the United States who ha[ve] not been admitted" are mandatorily detained under 8 U.S.C. § 1225); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (same); *see also Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025; *Barrios Sandoval v. Acuna*, No. 25-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson*, No. 25-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025).

However, Federal Respondents also acknowledge that although Petitioner never references *Loja* in his petition, once the auto stay provision is removed from the analysis, Petitioner appears to fall under this Court's reasoning in that case. There, this Court concluded that "by releasing [a] non-citizen under § 1226, 'the government failed to reserve its right to treat petitioner in the same manner as that of any other applicant for admission to the United States.'" *Loja*, 2025 WL 3079160, at *2, quoting *De Andrade v. Moniz*, 802 F. Supp. 3d 325, 332 (D. Mass. 2025) (cleaned up).

Here, Federal Respondents recognize that Petitioner was released on an Order of Recognizance, a form of discretionary parole arising from 8 U.S.C. § 1226. Pet. ¶ 25. Accordingly, under *Loja*'s reasoning, ICE cannot now treat Petitioner as any other applicant for admission, after representing that he was released under the statutory provision allowing for a bond hearing.

To preserve their objection for appeal, Respondents incorporate by reference the legal arguments they presented in opposition to the petition in *Loja*. No. 25-cv-386 (D.N.H.), Doc. No. 6. However, the interests of judicial economy and expeditious resolution weigh against additional briefing or argument. Therefore, Respondents acknowledge that if this Court follows the reasoning in *Loja*, the relief granted there will issue here, and they ask the Court to accept this abbreviated briefing and rule on the pleadings.

Respectfully submitted,

Date: February 9, 2026

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